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STEPHEN R. ROSS

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

August 25, 1993

HAND-DELIVERED

William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

RE: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 - Rate Regulation, MM Docket No. 93-215

Dear Mr. Caton:

Enclosed on behalf of the Medium-Sized Operators Group, are the original and four copies of the Group's Comments in the above-referenced proceeding. Exhibits 1 and 4 attached hereto, contain the facsimile signatures of Leo J. Hindery, Jr. and John E. Kane. Original signatures will be submitted as soon as possible.

Please address any questions concerning these Comments to the undersigned.

Cordially,

Stephen R. Ross

SRR/rid

Enclosures

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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AUG 2 5 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of:	)	
	)	
Implementation of the Cable	)	
Television Consumer Protection	)	MM Docket No. 93-215
and Competition Act of 1992	)	
	)	
Rate Regulation	)	

COMMENTS OF THE MEDIUM-SIZED OPERATORS GROUP

Adelphia Communications Corporation
Bresnan Communications Company
Cablevision Systems Corp.
Columbia International, Inc.
Falcon Cable TV
Hauser Communications
InterMedia Partners
Jones Spacelink, Ltd.
Lenfest Communications, Inc.
Marcus Cable
Prime Cable
RP Companies, Inc.
Simmons Communications, Inc.
Star Cablevision Group
Sutton Capital Associates
Triax Communications Corp.
United Video Cablevision, Inc.
US Cable Corporation

Stephen R. Ross
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Dated: August 25, 1993

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SUMMARY

The Medium-Sized Operators Group ("the Group") addresses the following issues in these comments. First, the FCC cannot, consistent with Constitutional standards, impose rate of return regulation on the cable television industry overnight. Transitional rules are required to ensure that cable operators receive a fair return on their investment.

Second, effective streamlined cost-of-service options are mandated by the 1992 Cable Act, and are necessary to avoid overly-burdensome administrative costs and delays. Proposals for streamlined options are discussed herein.

Third, intangible assets are an integral part of the asset structure of cable television systems. As discussed herein, there are numerous, legitimate business reasons for assigning values to intangible assets which have nothing to do with expectations of monopoly profits. Operators must be permitted to include the value of intangibles in their rate base. Moreover, operators are entitled to include past operating losses in the rate base.

Fourth, the FCC should not prescribe depreciation rates. Rather, should be monitored by the FCC and justified as needed by cable operators.

Fifth, an income tax allowance must be provided to cable operators, regardless of form of ownership.

Sixth, and finally, the FCC's allocation rules set forth in §76.924 are sufficient to guide operators in preparing

cost-of-service showings for the initialization of rates. With respect to upgrades and rebuilds, however, the substantial majority of these capital costs are appropriately attributable to the regulated tiers.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 93-215
	)	
Rate Regulation	)	

COMMENTS OF THE MEDIUM-SIZED OPERATORS GROUP

The medium-sized operators group[1] ("the Group"), by its attorneys, hereby submits the following comments on the Federal Communications Commission's ("FCC or Commission") Notice of Proposed Rulemaking, ("NPRM") FCC 93-353, MM Docket No. 93-215 (released July 16, 1993) on cable television cost-of-service standards.

The Group's members operate cable television systems which together represent more than 25% of the total cable television subscribers in the United States, and are directly affected by the proposed regulations. Accordingly, the following comments are respectfully submitted in response to the Commission's NPRM in the above-referenced proceeding.

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[1] The members of this group include: Adelphia Communications Corporation, Bresnan Communications Company, Cablevision Systems Corp., Columbia International, Inc., Falcon Cable TV, Hauser Communications, InterMedia Partners, Jones Spacelink, Ltd., Lenfest Communications, Inc., Marcus Cable, Prime Cable, RP Companies, Inc., Simmons Communications, Inc., Star Cablevision Group, Sutton Capital Associates, Triax Communications Corp., United Video Cablevision, Inc., and US Cable Corporation.

I. INTRODUCTION

The Group offers comments on the following specific areas relating to cost-based showings. First, the Group emphasizes that imposing traditional utility-type regulation on the cable industry is contrary to Congress' intent not to "replicate Title II regulation." Moreover, while certain aspects of cost-based regulation may be applicable to cable television, cost-based regulation cannot be imposed on an industry overnight. Cable operators have a Constitutional right to earn a fair return on the present fair market value of the system. Bluefield Waterworks & I.Co. v. Public Service Commission, 262 U.S. 679 (1923). To the extent that existing industry accounting practices are inconsistent with the cost-based regulations adopted in this proceeding, the FCC must, at a minimum, provide transitional rules for cable operators to develop common and permissible accounting methodologies. The failure to proceed prudently and carefully will irrevocably damage a vital part of this country's telecommunications infrastructure.

Second, the Group supports the FCC's commitment to adopt streamlined cost-of-service showings where possible. The Group believes that the primary purpose of the cost-of-service option is to initialize regulated rates. Once rates are initialized, the Group anticipates that most rates will be regulated under the FCC's price cap mechanism, and cost-of-service would be employed only in extraordinary circumstances. Therefore, the cost-of-service standards adopted in this proceeding should allow operators to initialize rates with a minimum of administrative cost, accounting changes and regulatory delay.

As discussed herein, an integral part of the streamlining process would allow operators to use existing GAAP rules to determine depreciation. Operating expenses should be presumed reasonable as long as they are supported by audited financial statements. This would obviate the need for the FCC to develop a cable industry equivalent to the Uniform System of Accounts. The costs of upgrades and rebuilds, which are required by franchise authorities, and in many cases, necessary to comply with new cable technical standards and customer service requirements, should be treated as external costs to the price cap. In addition, operators should not be required to conduct cost-of-service showings for all regulated tiers if the rates for one or more regulated tiers are at or below their respective benchmark level. The Group believes that allowing operators to select cost-of-service only for regulated tiers above the benchmarks would substantially reduce the administrative burden for operators, franchise authorities, and the Commission.

The Group has asked Ernst & Young (E&Y) to complete extensive cost-of-service analyses of nine (9) cable systems operated by certain of the Group's members. The systems evaluated were selected to represent a wide range of cable system characteristics, and include older and recently rebuilt systems, which are varied in size, population growth rate and geographic service area. These examples are intended to provide guidance to the FCC in comparing cost data and in developing streamlined alternatives.

The cost analyses will be used to illustrate: the types and relative magnitudes of operating expenses incurred by cable operators; the methods of depreciation and amortization; the types of assets (tangible and intangible) on the balance sheets; the origins of the asset values; the capital structures of the cable systems; the organizational structures; and the forms of ownership. A preliminary examination of this information for the nine systems suggests that there is little uniformity among cable operators with respect to the items listed above. This lack of uniformity implies that attempts by the Commission to prescribe detailed accounting, depreciation and cost allocation rules will create significant additional cost for the cable industry, will significantly delay the process of justifying cable rates, and will create severe inequities among the operators choosing the cost-of-service alternative.

Third, the Group emphasizes that intangible assets are an integral part of the asset structure of cable television systems. Values assigned to intangibles, such as goodwill, subscriber lists and franchises, typically comprise about two-thirds of the market value of a cable system. The Group submits that all of a system's acquisition costs and the associated debt service should be included in the operator's rate base. In the alternative, acquisition costs could be amortized over time and treated as an annual expense.

<u>Fourth</u>, the Group does not believe that the FCC should prescribe depreciation schedules. Rather, current depreciation and amortization practices could be monitored by the FCC, and explained by operators as necessary. As explained in more detail by E&Y, the application of GAAP constraints to depreciation methods is sufficient to ensure that cable operators calculate depreciation rates in a reasonable and consistent manner.

<u>Fifth</u>, the Group submits that an income tax allowance should be afforded to all cable operators, regardless of the form of ownership. Partnerships, sole proprietorships and Subchapter S corporations incur tax liability just as corporations. The FCC's proposal to deny a tax allowance for certain business organization forms is inequitable and unjustified.

<u>Sixth</u>, and finally, the Group believes that the cost allocation rules established in the <u>Report & Order</u> are sufficient to allow an operator to allocate costs between regulated and unregulated services. Costs should be allocated to the franchise level in proportion to the number of subscribers in the franchise area, and costs should be allocated between tiers in proportion to the number of channels on the tier. NPRM at ¶ 59; 47 C.F.R. §§ 76.924(e)(1) and (2). Generally, these cost allocation rules are sufficient to initialize regulated rates. However, as shown herein, the substantial majority of the capital costs associated with upgrades and rebuilds are directly attributable to the basic

and cable programming tiers. Thus, for fiber optic upgrades and rebuilds, a per channel allocation is not appropriate. More importantly, the FCC should not limit itself by adopting extremely detailed and rigid criteria at a time when the record is still being developed on cable industry costs and accounting practices. The need for flexibility is crucial in these early stages of rate regulation.

II. TRANSITIONAL RULES ARE REQUIRED

The FCC has made several proposals, based on traditional utility ratemaking precedent, regarding the future treatment of intangibles, valuation of the cable television distribution plant, depreciation and amortization schedules, taxes, operating losses and cost allocation issues. Each of these issues is discussed more fully below. However, in order to evaluate the proper treatment of specific items and the extent to which they should be included in the ratebase, it is imperative that the FCC adopt transitional rules that allow cable operators time to modify accounting practices and ownership structure, if necessary. Transitional rules are absolutely required for the FCC's cost-of-service option to meet Constitutional and statutory requirements.

While the Group acknowledges that the FCC has broad discretion to regulate rates, the FCC is bound by Constitutional and statutory limits. Whatever cost-of-service rules are ultimately adopted, cable operators are Constitutionally entitled to a "reasonable return on the value of the property used at the time it is being used to render the service." Bluefield Waterworks v. Public Service Commission, 262 U.S. 679, 690 (1923)(emphasis added). Specifically, "if the property . . . has increased in value since it was acquired, the company is entitled to the benefit of such increase." Bluefield, supra, citing, Wilcox v. Consolidated Gas Co., 212 U.S. 19, 42 (1909). The increased value of plant on which a company is entitled to earn a fair rate of return extends further than just the value of capital improvements implemented over the years. The "value of property at the time it is used for the public" is determined by the "market value, or what is called exchange value." Los Angeles Gas & Elec. Corp. v. Railroad Comm'n., 289 U.S. 287, 305 (1933).

With respect to public utilities, "the property is not ordinarily the subject of barter and sale" and thus, the Courts and public service commissions must ascertain the property's value using its "reasonable judgment, having its basis in a proper consideration of all relevant facts." Id. at 306, citing, Minnesota Rate Cases, 230 U.S. 352, 434 (1913). However, as the FCC knows, cable television properties routinely change hands making the exchange value or market value of a cable system easily ascertainable.

Therefore, the Commission's tentative conclusion that an "original cost methodology" should be used to value a cable system's plant in service[2] is contrary to the Constitutional

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[2] NPRM at ¶ 35.

standard requiring ratemaking authorities to base the value of plant in service at the present market value of the property. Furthermore, as a practical matter, valuing plant in service based on original cost would be virtually impossible because the required records are generally not available. See, Declarations of Leo J. Hindery, Jr., Shirley C. Gambone, and Marc B. Nathanson, attached hereto as Exhibits 1, 2 and 3.

Since cable operators are entitled to a fair return on the market value of its system, the FCC's proposal to exclude intangibles, such as subscriber lists and franchise rights, from the rate base would be contrary to Constitutional requirements. Intangibles generally comprise about two-thirds of the market value of a cable system. See, Declaration of John E. Kane, attached hereto as Exhibit 4. Thus, the exclusion of "excess acquisition costs" from the rate base would be appropriate only if such "excess costs" are defined as amounts over the fair market value of a system, which includes the value of intangibles.[3] Moreover, valuing the cable plant based on the present market value of the system also recognizes the fact that the operator is not relieved from the debt service obligations

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[3] As the Supreme Court has stated, "It is not the theory but the impact of the rate order which counts." Duquesne Light Co. Barasch, 488 U.S. 299, 310 (1989), citing, Federal Power Comm'n. v. Hope Natural Gas Co., 320 U.S. 591, 602 (1944). If the total effect of the rate regulation is not reasonable, it violates the Constitution. Here, the effect of the FCC's proposal to disallow intangibles would violate the Group's Constitutional right to a fair return on their investment.

incurred in an unregulated environment.[4] As the Commission recognizes, the seller, not the buyer, reaps whatever "premiums," if any, may have been attributable to the acquisition cost. NPRM at ¶ 36. It would be unfair for the FCC to penalize purchasers who in good faith acquired cable systems based on fair market value.

In addition, the FCC's cost-of-service rules must recognize that the cable television industry is not a public utility. The regulation of public utilities foster special concerns regarding the health, safety and welfare that are simply not applicable to video entertainment. In Bluefield, supra, the Supreme Court noted that public utilities are only entitled to a rate of return similar to the profits of other utilities, i.e., it was not entitled to "profits such as are realized or anticipated in highly profitable enterprises or speculative ventures." 262 U.S. at 692-3. The fact remains, that the cable television industry is a speculative, uncertain and entrepreneurial industry, and any rate of return established by the Commission must take into account investor expectations associated with an industry with these characteristics. Specifically, the higher expected rate of return associated with speculative businesses reflects the recognition that such businesses face significant competition in the future, as well as

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[4] "From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for capital costs of the business. These include service on debt and dividends on stock." Hope, supra, 320 U.S. at 603 (emphasis added).

significant requirements for new capital investment and customers products and services, and thus very uncertain returns. Accordingly, unlike telephone companies whose rates guarantee profits, cable systems have not been protected from operating losses through rate regulation. Also, as discussed more fully below, the FCC's transitional rules for cable television must allow operators to include operating losses in the ratebase.

III. STREAMLINED COST-OF-SERVICE SHOWINGS

The Group fully supports the Commission's position that "streamlined" alternatives to full cost-of-service showings should be developed. Such streamlined procedures would be consistent with Congress' express direction that the FCC not adopt full Title II regulation for cable television operators,[5] and they would materially reduce the administrative burdens placed on operators, franchise authorities, and the Commission.

A. Upgrades and Rebuilds Should Be External to the Price Cap

As an initial matter, the Group believes the costs associated with rebuilds and upgrades, which are largely required by the franchise, should be treated as "external" costs since they are beyond the control of the operator. As discussed more fully in Section VII, _infra_, many cable operators will be

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[5] "It is not the Committee's intention to replicate Title II regulation. The FCC should create a formula that is uncomplicated to implement, administer, and enforce, and should avoid creating a cable equivalent of a common carrier 'cost allocation manual.'" House Report No. 102-628 at 83.

required to initiate fiber optic upgrades to order to comply with new cable technical standards and customer service requirements. Affording external treatment to the costs of capital improvements would allow operators to utilize the price cap mechanism to account for these costs without the need for a cost-of-service showing every time an operator upgrades or rebuilds it system.[6]

To preserve maximum flexibility, however, the FCC should preserve §76.922, which allows cable operators, after rates are initialized, to choose between price caps and cost-of-service. The Group believes this approach would offer operators a viable and effective means to develop cost-of-service showings.

If the FCC declines to allow operators to use the price cap mechanism to handle the external treatment of costs associated with rebuilds and upgrades, then the Group proposes that a streamlined approach for capital improvements be implemented. The FCC's proposal to permit cable operators to "document key cost factors" may be an effective alternative to a full cost-of-service showing whereby operators would be permitted to charge benchmark rates, plus an "add-on" amount attributable to the "extraordinary" cost factors. NPRM at ¶ 72. Under this streamlined approach, an operator would only have to produce cost information relating to the capital improvements, such as

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[6] As discussed in Section VII, infra, the majority of the external costs of upgrades and rebuilds should be allocated to the regulated tiers because the incremental cost of adding channels for unregulated services is small.

materials, labor, and interest. How these costs should be allocated is discussed in Section VII, infra.

Moreover, operators should be permitted to adopt benchmark rates for basic tier service and choose the cost-of-service option for the cable programming services tiers, and vice versa, as appropriate. The Group submits that where the rates for one or more regulated tiers are within the benchmark, providing cost information for those tiers would be unnecessary and administratively burdensome, for the operator, the franchise authority and the Commission. Allowing operators to provide cost-of-service justifications only for above-benchmark rates would further the streamlining process.

B. The FCC Should Not Adopt a Productivity Offset

The FCC also proposed, as one course of regulatory action, to compare above-benchmark rates to 1986 rates adjusted forward for inflation and by a "productivity offset." NPRM at ¶ 71. The Group does not believe this approach is effective, for the following reasons.

As background, the productivity offset is intended to give regulated companies whose rates were in the past set by cost-plus regulation incentives to reduce costs. The underlying policy assumption is that cost-plus regulation guaranteed recovery of operating expenses, capital costs and associated taxes, even at artificially high levels. The purpose of the productivity offset is to encourage the regulated company to reduce its presumably bloated costs through above average productivity improvements, and to share the benefits of this improved productivity with rate payers.

The productivity factor is an offset to the inflation factor (for example, GNPPI minus X, where GNPPI is the annual change in inflation and X is the estimated change in productivity). The implicit assumption is that the inflation factor captures economy-wide changes in productivity, but because the regulated industry should achieve above-average productivity growth, there needs to be an additional amount subtracted from the inflation factor to take into account this above average productivity growth. Said another way, if the industry productivity growth is equal to the economy-wide productivity growth, then there would be no justification for an X greater than zero, because economy-wide productivity growth is already included in the inflation factor.

The Group submits that the FCC should not introduce a productivity factor in its price cap formula. First, such a productivity factor can only be developed based on an extensive study of industry data over a long period of time (10 to 20 years). This was possible in the case of AT&T and the LECs because of their long history as regulated companies and the consistency of their (highly regulated) accounting information. Even for these companies, however, the FCC needed two or three years to decide on a productivity factor. There is no such data on the cable industry.

Second, the FCC implemented price cap regulation for AT&T and the LECs when they were still, by and large, cost-plus regulated monopolies (especially the LECs). Starting from this inefficient point, the LECs and AT&T could easily meet a relatively high annual productivity hurdle, just by managing their costs downward and riding the wave of demand growth in the telecommunications industry. In contrast, the cable industry is much more competitive and has not been faced with the perverse incentives of cost-plus regulation. The cable industry has operated lean and mean from the beginning, without any assurance of earning a reasonable return, except by pleasing customers and operating efficiently. Because the cable industry is already very productive, relative to the LECs, it can not be expected to achieve roughly the same growth in productivity as the LECs, which are not subject to a productivity factor, and therefore the cable industry should also not be assigned a productivity factor in the price cap formula.

Since the cable operators have been unregulated, it should thus be assumed that they have minimized their costs. If a productivity offset is introduced, the perverse result will therefore be incentives to decrease costs by decreasing the quality of service provided. This potential to unintentionally provide perverse incentives to decrease quality is the principle disadvantage in using a price cap with a productivity offset.[7]

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[7] *See*, Brown, Einhorn and Vogelsang, "Toward Improved and Practical Incentive Regulation," *Journal of Regulatory Economics*, 1991.

IV. OPERATING EXPENSES

The FCC proposes to include the following as permissible operating expenses: plant specific expenses (maintenance); plant non-specific expenses (programming expenses, power, engineering and testing); customer operating expenses (marketing, billing and collection); and corporate operating expenses (legal, planning, accounting and finance). NPRM at ¶ 24. The Group agrees that these categories of expenses should be treated as operating expenses and should be recoverable through subscriber rates. In addition, advertising costs associated with regulated programming services should be included as a recoverable operating expense.

The FCC asks whether programming costs should be treated as an operating expense, or included in the rate base, thereby allowing operators to earn a return on programming. NPRM at ¶ 24, n.25. As the Group previously urged the FCC, the actual cost of programming for channels added after September 1, 1993, plus the related start-up marketing costs and a reasonable profit, should be added to the price cap formula.[8] Once channels are added, cost increases for those channels would be an external adjustment to the price cap to the extent that increases exceed inflation. This approach will provide operators with

[8] "Supplemental Comments of the Medium-Sized Operators Group on Petitions for Reconsideration," MM Docket No. 92-266, August 4, 1993, at p.5. See also Ernst & Young Report appended thereto at p.9.

adequate incentives to continue to add quality programming on their systems.

As indicated above, the Group believes that operating expenses, excluding depreciation, amortization and income taxes, should be presumed reasonable as long as they are supported by audited financial statements. Since cost-of-service will be primarily used to initialize regulated rates starting in November 1993, there is not sufficient time to develop, test and implement detailed, uniform accounting procedures. Rather, the FCC can safely and just as effectively rely on an historical test year (e.g., fiscal year-end 9/30/93), which will eliminate the need for projections of operating costs. Since cable companies have been operating without cost-of-service regulation, there is no reason to believe that historical, audited balance sheets would be unreasonable.[9] This would obviate the need for the FCC to develop a cable industry Uniform System of Accounts.

V. DETERMINING THE RATE BASE

1. Excess Acquisition Costs

The FCC has tentatively proposed to exclude "excess acquisition costs" from a cable operator's rate base. This proposal is based on the presumption that cable system acquisition costs reflect premium rates based on the expectation

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[9] If for some reason the operator has incurred a significant cost change since the last audited financials, the operator should be able to estimate these costs and include them in the cost-of-service study as "pro forma" adjustments.

of monopoly profits. NPRM at ¶ 36. The Group believes that this presumption is incorrect since companies in competitive markets frequently acquire other companies for premiums in excess of the book value of tangible assets and in the process record large intangible balances. E&Y is in the process of reviewing publicly available data regarding intangible assets in competitive and non-competitive industries. Their preliminary findings support the conclusion that the presence of high levels of intangible assets is consistent with the normal workings of competitive markets. This conclusion and supporting data will be described in further detail by E&Y in a report which will be submitted to the FCC on or before September 14, 1993, the reply date in this proceeding.

In addition, the FCC cannot ignore the fact that intangible assets comprise 60% to 75% of the current market value of cable systems in the country. See, Declaration of John E. Kane, Exhibit 4. Based on the experience of Kane Reece Associates in appraising over $25 billion of CATV businesses in the past four years, the high proportion of intangibles to total assets found in cable systems is similar to the proportions found in other media and communications businesses that operate in competitive markets. Id. There are legitimate reasons why the market value of a cable system exceeds the book value. For example, the value of a cable system includes a number of intangibles related to the CATV franchise. Specifically, these include the right to conduct business, market new subscribers, and the right to use public rights of way. Id.

These facts demonstrate that the FCC must, to a great extent, "take the industry as it finds it." Unless the FCC permits operators to include the total acquisition cost in its rate base, even if only for a transitional period, regulated cable rates will be confiscatory and contrary to the requirements of the Constitution.

2. Operating Losses

As stated above, cable television systems are not public utilities -- they are speculative, entrepreneurial ventures. As such, cable system operators are entitled to earn a rate of return that is equivalent to similar ventures. Bluefield, supra, 262 U.S. at 692-3. Investors expect a higher rate of return with respect to speculative businesses because the risks are greater. Operating losses associated with start-up costs necessarily contribute to this risk and must be part of the equation.

The Commission should avoid cost-of-service rules that would result in irreparable harm to the operators and their customers, which will occur if operators can not recover the costs of operations consistent with prior commitments to banks, bondholders and investors.[10] The effects of harmful rate regulations are certainly not limited to the debt and equity

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[10] See, Letter from Bank of America and 17 other banks to FCC, MM Docket No. 93-266, dated June 21, 1993.

holders of the cable companies. Customers will also be harmed if banks and investors encounter significantly reduced incentives to put capital into cable systems and programming.

Cable operators invested in their systems with the expectation of earning a return over the life of the investment which is commensurate with the risk. This expectation of a reasonable return included projections of customer growth, cable penetration, prices for all services, introduction of new services, operating efficiencies, new capital investment, etc. Of course, expectations or projections can prove wrong, either up or down, but the point is that investors rely on expectations of risk and return when making investments and paying a price for those investments. Over the life of the investment the operators in the Group expected to provide quality service at prices that reflected the value delivered to customers, and to earn a reasonable return.

Often, expectations include financial losses in the initial years, as costs are incurred in advance of expected subscriber and revenue growth in order to improve quality or capacity of the plant, quality of customer service, etc. In fact, as in most speculative entrepreneurial ventures, financial losses in early years are considered normal, as long as one can expect future revenue growth and cost-efficiencies sufficient to earn a reasonable return over the life of the investment.

Also, it was often the case that operators did not initially charge "market prices" (the maximum the market would bear), but phased in price increases over a period of years. Such was common practice in the industry when systems were purchased and immediately rebuilt. The expectation was that the rates could be increased in future years to offset the initial losses, as customers received added value and became accustomed to the increased rates. While it is true that the operators were not forced by any regulatory commission to charge below-market rates, which some people would argue precludes them now from recovering the past losses from existing customers, the operators fully expected to completely recover their investment and earn a reasonable return, including a recovery of initial losses.

As the industry consolidated, the accumulated financial losses were transformed, in part at least, at the time of an acquisition into an "intangible asset" on the accounting books of the purchaser. That is, the seller expected and often received compensation for the risk of making the initial (and as yet unrecovered) investments in plant, system reliability, customer service, operating systems, etc. Market prices of cable systems were based on the expectation that the purchaser would (eventually) be able to charge market prices for the cable services, and in doing so indirectly recover the losses incurred by the original investors.

It is safe to say that all of the experience and expectations that created the existing financial structures in the cable industry did not include rate regulation by the FCC. The cable operators (and their customers and investors) are now